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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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42640-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STEPHEN JOSEPH BUCHANAN II

Appellant,

v.

VARONICA ANN BUCHANAN
Respondent.

BRIEF OF APPELLANT

LAW OFFICES OF
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TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR	1
B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR .	1
C. STATEMENT OF CASE	1-3
D. LEGAL AUTHORITY AND ARGUMENT	3-6
E. CONCLUSION	6
F. CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

CASES

<u>In re Marriage of Wicklund</u> , 84 Wash.App. 763, 770 (1996)	3
<u>Rivard v. Rivard</u> , 75 Wash.2d 415, 418 (1969)	4
<u>In re the Marriage of Christel & Blanchard</u> , 101 Wn. App. 13, 23 (2000)	4, 5

A. ASSIGNMENT OF ERROR

1. The trial court committed an error of law when it modified the parties' final parenting plan.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. Did the trial court abuse its discretion when it modified the parties' final parenting plan by authorizing the children to attend Life Christian Academy in direct violation of the parties' agreed final parenting plan when there was (1) no agreement, (2) no petition to modify and (3) no agreed change in this case? (Assignment of Error 1).

C. STATEMENT OF THE CASE

Appellant Stephen Buchanan and Respondent Veronica Buchanan have two children, Elizabeth who is currently in her 4th grade year at Life Christian Academy and Stephen who is currently in his 3rd grade year at Life Christian Academy. RP 27. The children's attendance of Life Christian Academy is in violation of the Agreed Order Supplementing Final Parenting Plan Pursuant to Mediation Agreement filed in Pierce County Superior Court on October

31, 2008. RP 20-22. The salient portion of the Agreed Order states, "Unless father agrees, the children shall not continue to attend Life Christian." RP 21. However, the parties did agree in that same order that the children could attend Life Christian through the 2010 Spring enrollment period (an additional two school years). RP 5.

The mother continued to enroll the children and have the children attend Life Christian over the father's objections. RP 12-14.

Not that it is relevant, but the father objects to the children attending Life Christian because he believes that Life Christian's evangelical stance against homosexuals is damaging to his children. RP 12-13. Particularly since the father's sister is an open lesbian and because the children's maternal grandfather is openly gay. RP 12-13. Further, Life Christian's indoctrination of children that nonbelievers are going to hell like the father causes significant psychological stress on the children. RP 13. The father reports, "In fact, the children often tearfully report to me that I am going to

hell." RP 13.

On August 31, 2011 Pierce County Superior Court Commissioner Clinton P. Johnson granted the father's motion to restrain the children from continuing to matriculate at Life Christian. RP 114 to 120. On September 2, 2011 Pierce County Superior Court Judge Rosanne Buckner granted the mother's motion for revision of Commissioner Johnson's order of August 31, 2011. RP 135. Over the father's objection, and in violation of the Agreed Order Supplementing the Final Parenting Plan, the children continue to matriculate at Life Christian.

D. LEGAL AUTHORITY AND ARGUMENT

Generally, a trial court's rulings dealing with the provisions of a parenting plan are reviewed for abuse of discretion. In re Marriage of Wicklund, 84 Wash.App. 763, 770 (1996). A trial court abuses its discretion if its decision is manifestly unreasonable, or based on untenable grounds or untenable reasons. Wicklund, 84 Wash.App. at 770 n. 1.

The trial court's order on appeal completely modifies

the parties' parenting plan without a finding of adequate cause and without a substantial change of circumstances. A modification occurs when a party's rights are either extended beyond or reduced from those originally intended in the decree. Rivard v. Rivard, 75 Wash.2d 415, 418 (1969). A court may clarify a decree by defining the parties' respective rights and obligations, if the parties cannot agree on the meaning of a particular provision. E.g., Rivard, 75 Wash.2d at 419 (upholding court's clarification that father could have children on alternate weekends and one evening per week, when parties could not agree on meaning of divorce decree's phrase "reasonable visitation rights").

A permanent parenting plan may be changed in three ways: by agreement, by petition to modify, and by temporary order. No agreed change existed in this case. No petition to modify was pending. The challenged order is simply an impermissible modification. In re the Marriage of Christel & Blanchard, 101 Wn. App. 13, 23 (2000).

The parties' motions before the court were motions to

enforce the decree, to enjoin the children from matriculating in Life Christian Academy. No motion to clarify the dispute resolution process was pending. No motion to modify the dispute resolution process was pending. Christel at 23.

The language used by the court in the order on appeal speaks to the future, not the present dispute, and includes a waiver of rights. This language goes beyond explaining the provisions of the existing parenting plan. The language goes beyond filling in procedural details. The order on its face imposes new limits on the rights of the parents. It is not a clarification of the existing parenting plan. In addition, the language is clearly intended to apply into the future. It has all of the characteristics of a permanent change rather than a temporary order. The language used by the court amounts to a modification of the parenting plan. No action for modification was pending. The court abused its discretion. Christel at 23.

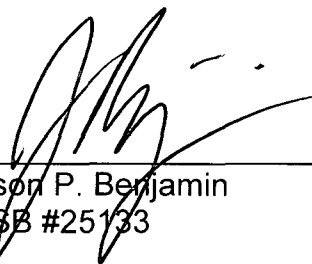
The issue of whether the children were allowed to attend Life Christian Academy after Spring 2010 had already

been decided. The language of the court is prospective and permanent. Therefore, the court abused its discretion. The court's order must be vacated.

E. CONCLUSION

For the foregoing reasons, Mr. Buchanan respectfully requests this Court reverse and vacate Judge Buckner's ruling and reinstate the parties' agreed parenting plan.

RESPECTFULLY SUBMITTED this 7th day of March,
2012.



Jason P. Benjamin
WSB #25133

COUPLER, JACOB
CIVIL DIVISION II

F. CERTIFICATE OF SERVICE

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I certify that on the 7th day of March, 2012, I caused a

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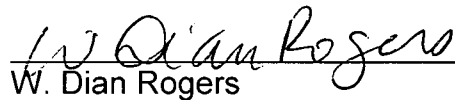
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DATED this 7th day of March, 2012, at Lakewood,
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W. Dian Rogers